

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Access Charge Reform;)	CC Docket No. 96-262, 94-1,
Price Cap Performance Review for Local)	99-249 and 96-45
Exchange Carriers;)	
Low Volume Long-Distance Users;)	
Federal-State Joint Board on Universal Service)	

Comments of CenturyTel, Inc.

CenturyTel, Inc. ("CenturyTel"), through its attorneys, hereby offers the following Comments on the Public Notice issued in the above-captioned proceeding released December 4, 2001.¹

I. INTRODUCTION AND BACKGROUND

A. Procedural History

On May 31, 2000, the Commission adopted an integrated interstate access reform and universal service proposal put forth by the Coalition for Affordable Local and Long Distance Service (CALLS).² The *CALLS Order*, among other things, reformed the interstate access rate structure for price cap carriers and established an explicit interstate access universal service support mechanism in the amount of \$650 million. On appeal, the Fifth Circuit affirmed the *CALLS Order* in most respects, but remanded for further analysis and explanation issues regarding the establishment of the \$650 million fund.³ The FCC issued a Public Notice on

¹ Common Carrier Bureau Seeks Comment on Remand of \$650 Million Support Amount under Interstate Access Support Mechanism for Price Cap Carriers, *Public Notice*, (rel. Dec. 4, 2001) ("*Public Notice*").

² *In the Matter of Deployment of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Distance Users, and Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket No. 96-262 and 94-1, and Report and Order in CC Docket 99-249, and Eleventh Report and Order in CC Docket 96-56, 15 FCC Rcd 12962 (rel. May 31, 2000) ("*CALLS Order*").

³ *Texas Office of Public Utility Counsel; National Association of State Utility Consumer Advocates v. Federal Communications Comm'n*, 265 F3d 313 (5th Cir. 2001).

December 4, 2001 seeking comment on the remanded issue.⁴ In addition to seeking comment on the justification of \$650 million as an appropriate amount for interstate access universal service support, the Commission sought comment on the uses of a cost model, including the Commission's forward-looking high cost model or the AT&T study, to identify the appropriate amount of support available under the support mechanism. The Commission further sought comment on the use of other studies or analyses to determine whether \$650 million is the amount of support that best serves the Commission's universal service goals.

B. CenturyTel's interest in this proceeding.

Recently, CenturyTel, a non-CALLS participant with no interstate price cap properties, entered into a definitive agreement with Verizon to purchase approximately 675,000 access lines in Alabama and Missouri (the "Exchanges"). CenturyTel plans to continue to operate the properties under price cap regulation and make the changes necessary to adapt to an interstate price cap environment.⁵ However, as a potential participant in the CALLS process, CenturyTel urges the Commission to carefully consider the sufficiency of the interstate access universal service fund for divested price cap lines and the future needs of those customers.

II. DISCUSSION

A. Interstate access support for the Exchanges may be insufficient as CenturyTel makes investments to keep pace with customer needs.

CenturyTel expects to make significant plant and technology investments in the Exchanges. Having purchased the majority of its rural exchange lines from price cap carriers,

⁴ *Public Notice*. The Fifth Circuit also remanded to the FCC the X-Factor issue, concluding that the Commission "lacked a rational basis in the record to support the 6.5 percent figure;" however, the Commission has not yet sought comment on this issue. 265 F3d at 328.

⁵ On November 28, 2001, CenturyTel requested waiver of the Commission's all-or-nothing rule, which will allow the acquired Exchanges to remain under price cap regulation without requiring CenturyTel to convert its rate-of-return properties to price cap regulation. CenturyTel Petition for Waiver, CCB/CPD No. 01-36

CenturyTel has observed that rural exchanges divested from the larger companies often are in areas where the sellers have invested the least. Plant is often substantially depreciated and sometimes out-dated; thus, significant improvements to the infrastructure are often needed following the acquisition to improve the services available to customers. For example, from fourth quarter 2000 through fourth quarter 2001, CenturyTel spent over \$64 million on newly acquired exchanges in Arkansas and over \$46 million on newly acquired exchanges in Wisconsin, resulting in an average capital expenditure of approximately \$285 per line for those exchanges.⁶ These investments were necessary so customers in these exchanges could get core service of the type and level comparable to that which is already available in more densely populated areas, and rural areas that receive adequate support. Local dial-up Internet access, for example, was unavailable in the majority of those exchanges at the time the price cap carrier sold them, because basic transmission and switching services needed to be upgraded. The divested loops in many areas were fully exhausted, which required that CenturyTel reinforce the loop, install new fiber, and drop in remote terminals, so customers could receive basic services that were already available in CenturyTel's legacy properties. These are precisely the types of investment that the universal service fund is designed to support.

CenturyTel anticipates that it will have to make similar investments when it acquires the Exchanges. Additional investment will most likely be needed so that CenturyTel can offer basic and advanced telecommunications capabilities to customers in the Exchanges. For example, CenturyTel may have to condition loops, remove bridge taps and load coils, and make other common line improvements before it can offer advanced services. CenturyTel

(filed Nov. 28, 2001) (Alabama Petition); CenturyTel Petition for Waiver, CCB/CPD No. 01-30 (filed Nov. 28, 2001) (Missouri Petition).

⁶ See CenturyTel Acquisition CAPEX in Exchanges Acquired in 2000 (Attachment 1).

conservatively estimates that it will invest more than \$100 million in the Exchanges per year for several years following the acquisition. For these reasons, the Commission should review the effect of the CALLS rate structure and interstate access support mechanism on rural lines divested by price cap carriers.

Iowa Telecom paints a similar picture in its Emergency Petition for Forbearance.⁷ According to Iowa Telecom, divested rural exchanges often require substantial upgrades to improve the quality of voice service and to make the network capable of providing advanced services.⁸ Iowa Telecom notes that CLASS features and voice mail services are not even available to many of its customers,⁹ and digital capability and high-speed data services are available to less than 30% of its customers -- after the company's infrastructure investments since July 2000.¹⁰ Iowa Telecom states that the target traffic-sensitive rates under CALLS will grossly under-recover its costs.¹¹ The current *CALLS Order* never anticipated the magnitude of such future investment requirements and customer needs.

In addition, because common line, marketing, and transport interconnection charge (CMT) revenue, interstate access rates, and non-rural high cost support are all capped, there may be no meaningful mechanism for small price cap carriers to recover new investments from other sources. Pursuant to Section 36.605(a) of the Commission's rules, the safety net additive, for example, is not available for acquired exchanges.¹² Furthermore, the "safety valve"

⁷ See Emergency Petition for Forbearance, filed by Iowa Telecommunications Services, Inc. (Nov. 26, 2001) ("Emergency Petition").

⁸ Emergency Petition at 10-11.

⁹ *Id.* at 11-12.

¹⁰ *Id.* at 12.

¹¹ *Id.* at iv, 7, 25-32.

¹² 47 C.F.R. § 36.605(a).

mechanism¹³ provides inadequate high-cost support to rural carriers that purchase high-cost exchanges and make post-acquisition investments to improve the network infrastructure. As CenturyTel and NCTA argued on reconsideration of the *RTF Order*, the current safety valve mechanism prevents rural carriers from taking full advantage of the safety valve support that otherwise could be available to them because it does not allow carriers to receive support for the first year's investment.¹⁴ CenturyTel supported NCTA's proposal that the Commission define the index year expense adjustment as the selling carrier's expense adjustment at the time of the sale. In addition to providing insufficient support for intrastate allocated loop costs that increase as a result of new investment in outside plant facilities, the safety valve mechanism does not provide any support for the dollar-amount increases that such investments cause to the 25% of loop costs allocated to the interstate jurisdiction, pursuant to Section 36.154(c) of the Commission's rules.¹⁵

As explained above, loops from divested price cap properties often require significant post-acquisition investment; however, without adequate support, carriers purchasing these exchanges are not given the proper incentives to invest in or improve the properties. To operate acquired exchanges with outdated technology, while being subjected to restrictive regulations, simply would be unacceptable -- it would merely transfer a service quality problem from one carrier to another with no improvements for customers. CenturyTel is dedicated to upgrading the infrastructure in the Exchanges and providing improved basic and advanced

¹³ *In the Matter of Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244 (rel. May 23, 2001) ("*RTF Order*").

¹⁴ CenturyTel Comments in CC Docket No. 96-45, 00-256 (filed July 31, 2001); NTCA Petition for Reconsideration (filed July 5, 2001).

services to customers living in the Exchanges. The Commission should ensure that the interstate access universal service support mechanism is sufficient to allow investments that benefit consumers.

B. The current interstate access universal service support mechanism does not adequately address the impact on the fund of new price cap carriers becoming eligible for support.

The current interstate access universal service mechanism does not contemplate the impact on the fund of new price cap carriers seeking CALLS support. The CALLS negotiation began in earnest in 1999¹⁶ as part of an access reform initiative for price cap companies involving a coalition of most of the largest LECs, AT&T and Sprint. While what was achieved was admirable, the *CALLS Order* has not kept pace with changes taking place within the industry. Price cap carriers are selling lines in large numbers to smaller rate-of-return and price cap companies who were not represented in the original coalition,¹⁷ while customer expectations and needs in rural markets are increasing. Indeed, the Commission itself recently acknowledged that “the *CALLS Order* did not explicitly address how entry of new carriers into price caps affects the distribution of interstate access universal service support.”¹⁸ This proceeding presents the Commission with the perfect opportunity to address this oversight at a critical time.

1. So long as CALLS support is capped, the Commission will be unable to ensure sufficient universal service support, as required by Section 254(e) of the Communications Act.

¹⁵ 47 C.F.R. § 36.154(c); see 47 C.F.R. § 36.305(b)-(e); 47 C.F.R. § 36.631(d).

¹⁶ Letter from John Nakahata to Magaile Roman Salas, (dated Aug. 20, 1999).

¹⁷ See e.g., “Reshaping Rural Telephone Markets,” Legg Mason Wood Walker, Inc. (Fall 2001) (divestitures could total 10 million to 30 million lines).

¹⁸ *Puerto Rico Telephone Co., Petition for Waiver of Section 61.41 or Section 54.303(a) of the Commission’s Rules*, 16 FCC Rcd 12343, Order (rel. June 12, 2001) at 12353, ¶7.

The Communications Act of 1934, as amended, requires that universal service support for all carriers be specific, predictable, explicit and *sufficient* to ensure reasonably comparable services and rates between urban and rural areas.¹⁹ Because CALLS support is capped, however, there is a significant risk that the current interstate access universal service support mechanism will result in insufficient support to keep rates in high-cost and rural areas affordable and reasonably comparable to rates in low-cost and urban areas, in violation of the universal service principles outlined in Section 254(e).

The current interstate access universal service fund is fixed at \$650 million per year through 2005.²⁰ Nevertheless, the fund theoretically is available to new carriers electing price cap regulation. Thus, when a rate-of-return carrier elects price cap regulation and becomes eligible for interstate access support, the support for all carriers has to be recalculated and redistributed among more exchanges, yet the size of the fund remains the same. Even if the original amount of support as calculated under the *CALLS Order* were sufficient today, after support is redistributed over the greater number of exchanges, the existing exchanges will receive less support than originally predicted (unless the new lines receive no support). The inclusion of new price cap exchanges under CALLS therefore results in downward pressure on the amount of support distributed to *all* exchanges receiving support. The Commission cannot reasonably predict that either the new exchanges or the exchanges in CALLS when it was adopted will receive sufficient support. To ensure the sufficiency of the fund, the Commission should adopt a mechanism that provides a means for aggregate, explicit interstate access support to grow as new carriers elect price cap regulation.

¹⁹ 47 U.S.C. § 254(b),(e).

²⁰ 47 C.F.R. § 54.801(a); *CALLS Order*, 15 FCC Rcd at 13044, ¶198.

2. **The Commission should ensure that the interstate access support mechanism gives rate-of-return carriers an incentive to elect incentive regulation.**

For the reasons described above, the entry of new carriers into price cap regulation will likely result in insufficient and unpredictable support under the current interstate universal service support mechanism. Insufficient interstate universal service support, in turn, may have the effect of discouraging some carriers from electing incentive regulation. The Commission is currently seeking suggestions for incentive regulation for smaller carriers.²¹ To facilitate gradual election of incentive regulation, the Commission should adopt a mechanism that allows CALLS support to grow. If the Commission seeks to encourage investment and improved telecommunications services, carriers must be assured that they will receive sufficient support for their exchanges after they make the election.

The Commission also should grant rural carriers relief from the existing target access rate levels, to encourage them to elect incentive regulation. The current target access rates, which are the product of negotiation between the BOCs and AT&T and Sprint, bear no resemblance to a typical rural carrier's cost structure, particularly carriers that make significant investments in upgrading the infrastructure of divested rural price cap properties. The current target access rates, for example, would not permit CenturyTel to recover its costs in many of its exchange areas, and are too low to sustain significant plant investments. Because the target access rate is lower than costs²² and interstate access universal service support is insufficient, if

²¹ See *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, FCC 01-304 ("MAG Order") at ¶ 212.

²² See also Emergency Petition at 20-21, 25.

CenturyTel were to convert to price caps today, it would be forced to raise end-user rates to the detriment of rural customers. Such rate increases are inconsistent with Section 254's goal that urban and rural rates be reasonably comparable.²³ Rather than leave rural carriers to raise end-user rates, the Commission should, as a part of this proceeding, immediately forbear from applying the current target access rates under CALLS to rural carriers and permit them to align interstate access rates with their cost structure.

C. The Commission should reconsider whether the interstate access support mechanism is adequate in light of *state* support programs (or the absence thereof).

Section 254 requires the Commission and state commissions to work cooperatively to preserve universal service.²⁴ The Commission's *CALLS Order* failed to take into consideration whether changes to the interstate rate structure would create a shortfall on the intrastate side, for example, because of state rules requiring "mirroring" of federal traffic sensitive rate reductions.²⁵ States affected by the reduction in interstate traffic-sensitive rates should be given an opportunity to take necessary action to review the affected carriers' rate structures and levels to ensure that adequate state universal service mechanisms exist.²⁶

In remanding to the Commission its order adopting a high-cost support mechanism for non-rural carriers, the Tenth Circuit concluded that "the FCC may not simply assume that states will act on their own to preserve and advance universal service. It remains

²³ 47 U.S.C § 254(b)(3).

²⁴ 47 U.S.C. § 254(b).

²⁵ See Public Notice (Ref. No. 2526), Jan. 15, 2002. As CenturyTel noted in its petition for reconsideration of the *MAG Order*, some state public utility commissions require carriers' intrastate traffic-sensitive rates to "mirror" their corresponding traffic-sensitive interstate access charges (the Public Utility Commissions in Arkansas, Indiana, and Ohio for example). Thus, in those states, when a rate-of-return carrier elects price cap regulation, it will experience both a reduction in its interstate traffic-sensitive access revenues and its intrastate traffic-sensitive rates. This reduction in access charge revenues eliminates implicit support at the state level without creating additional explicit support at the federal or state level to replace it. This threat to universal service support will place upward pressure on local rates in those states.

obligated to create some kind of inducement – a ‘carrot’ or a ‘stick,’ for example, or simply a binding cooperative agreement with the states – for the state to assist in implementing the goals of universal service.” The court ordered the Commission to “develop mechanisms to induce state action” to ensure reasonably comparable services and rates between urban and rural areas.²⁷ Therefore, as the Commission evaluates its interstate access universal service support mechanism, it either should replace the implicit state support with explicit support at the federal level or find a way to induce the states to assist in achieving universal service goals.

III. CONCLUSION

For the foregoing reasons, CenturyTel maintains that the current CALLS support may be insufficient as companies make needed improvements or invest in new technology. CenturyTel urges the Commission to properly modify CALLS prior to 2005 by adopting a support mechanism that ensures sufficient interstate access support. The mechanism also should allow support to grow as new carriers elect price cap regulation, and not penalize carriers -- or their customers -- for making such an election by dooming them to yesterday’s technology.

Respectfully submitted,
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²⁶ 47 U.S.C. § 254(b); *Qwest Corp. v. FCC*, 258 F3d 1191, 1203-04 (10th Cir. 2001).

²⁷ 258 F3d at 1204.

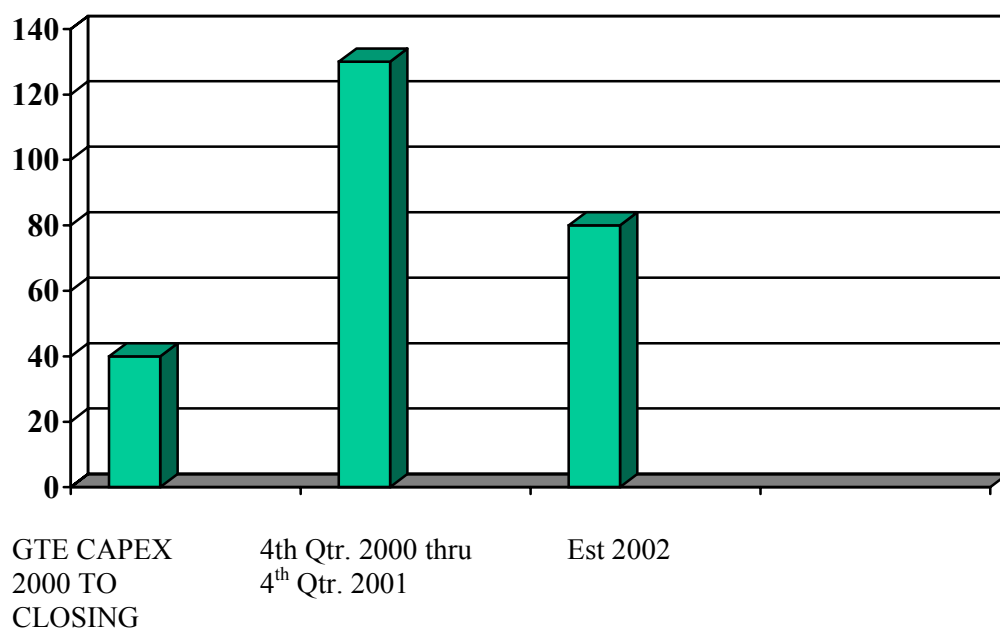
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CenturyTel CAPEX in Exchanges Acquired in 2000 (approx. 450,000 lines)

\$ Millions



Average CAPEX per line for exchanges acquired in Arkansas and Wisconsin in 2000: \$285

Average CAPEX per line per year for legacy exchanges is: \$170